building of such a drawbridge over a navigable stream, the owner of private property abutting on the stream cannot claim compensation. The majority opinion maintains that the lumber company acquired a right of access to its wharf, over the navigable waters, which cannot be taken away without compensation. Herein the court decides against the weight of authority, and cites no cases of weight to maintain its decision. This right to the navigable stream, which the court declares to be private, is a distinctly public right, which the adjoining land owner exercises subject to public control. Streams of any size, though entirely within one state and navigable only for barges and small steamboats, are under the control of the government of the United States. *Gilman* v. *Philadelphia,* 3 Wall. 713; *Cardwell* v. *Am. Bridge Co.,* 113 U. S. 205; *The Daniel Ball,* 10 Wall. 557. If Congress declares a bridge to be lawful, neither the State legislature nor the State court can declare it unlawful. The judgment of Congress is conclusive, and shall not be questioned by any court. *The Clinton Bridge,* 10 Wall. 454; *State* v. *Wheeling Bridge Co.,* 18 How. 421; *Miller* v. *Mayor,* 109 U. S. 385. The right of navigation in a tide-water channel is not an individual private property right, protected from governmental action by the constitutional provision prohibiting the taking of private property without just compensation. It is a public right only, which may be abridged or extinguished at the pleasure of the sovereign acting for the public, and without making compensation to those who were wont to use it. The right is always subject to be thus extinguished, and individuals should not assume it to be permanent. If any action by the sovereign, in exercising the right of control causes damage to the owner of property adjoining the navigable stream, it is a case of damnum absque injuria. *Frost* v. *Wash. Co. R. Co.,* 96 Me. 76, 51 Atl. 806, 59 L. R. A. 68; *Miller* v. *Mayor,* 109 U. S. 385; *Pound* v. *Turck,* 95 U. S. 459; *Escanaba Co.* v. *Chicago,* 107 U. S. 678; *Brooks* v. *Improvement Co.,* 82 Me. 17. In the principal case, the dissenting opinion represents the weight of reason and of authority.

NEGLIGENCE.—DUTY TO INDEPENDENT CONTRACTOR.—Defendant engaged in removing a rock bluff incident to the construction of its railroad, contracted with plaintiff to drive a tunnel in the face of the bluff in which to explode powder. A heavy blast in another tunnel brought down a quantity of rock immediately in front of plaintiff's tunnel. Plaintiff, at the direction of defendant's foreman, commenced to remove the debris, but being alarmed by the fall of a rock stopped work and reported such fact to defendant's foreman who said he would make the bluff safe. Plaintiff returned to work the next morning, after the foreman had assured him that he had caused the wall and slope to be made safe, and while so working was struck by a falling rock and injured. *Held,* that even if plaintiff was an independent contractor, and not an employe, defendant was liable for an injury caused by negligence in not making the place safe. *Gibson* v. *Chicago, M. & P. S. Ry. Co.* (1911), — Wash. —, 112 Pac. 919.

With few exceptions the cases agree in holding that premises upon which an independent contractor is required to labor for the benefit of the owner

must be reasonably safe for the purpose of such labor, so far as freedom from concealed dangers is concerned. *Sesler* v. *Rolfe Coal & Coke Co.*, 51 W. Va. 318, 41 S. E. 216; *Mayhew* v. *Sullivan Mining Co.*, 76 Me. 100. See note, 26 L. R. A., p. 524. This duty of exercising ordinary or reasonable care for the safety of an independent contractor results from the view that he is on the premises in pursuance of the invitation of the proprietor. 1 THOMPSON, NEGLIGENCE, Ed. 2, §§ 680, 979. For the same reason, if the contractor brings third persons, his own employes, his partners or assistants, to assist him in executing the contract, such persons are presumably upon the premises by the invitation of the owner and he owes to them the same measure of care that he owes to the contractor himself. *Dougherty* v. *D. C. Weeks & Son*, 111 N. Y. Supp. 218; *Dallas Mfg. Co.* v. *Townes*, 148 Ala. 146, 41 South. 988; *John Spry Lumber Co.* v. *Duggan*, 182 Ill. 218, 54 N. E. 1002.

POLICE POWER—THEATERS—REGULATION BY CITY.—Under an ordinance of the City of Chicago requiring all persons conducting theaters to employ a fireman, to be detailed by the fire marshal of the city, from the regular city fire department, and to pay for the services so rendered, an action was brought by the city to recover for the services of a fireman, *Held*, Chicago Charter, Art. 5, § 63, empowering the city to license or prohibit theaters, etc., to regulate places of amusement, the police of the city, and enforce all necessary police ordinances, and to determine what shall be a nuisance, and to abate the same, does not authorize an ordinance requiring persons conducting theaters, to employ a fireman to be detailed by the fire marshal from the regular city fire department, and to pay for the services so rendered. *City of Chicago* v. *Weber* (1910), — Ill. —, 92 N. E. 859.

The principal case is one of first instance in the State of Illinois, and the point involved seems to have been passed upon by the courts of but two other states, the respective decisions being in direct conflict. In accord with the holding above is *Waters* v. *Leech*, 3 Ark. 110, which was an action by a constable against the manager of a theater for services rendered, the charter of the city and the ordinance passed thereunder being similar to the provisions in the principal case. Contra: *Tannenbaum* v. *Rehm*, 152 Ala. 494, 44 South. 532, 11 L. R. A. (N. S.) 700, 126 Am. St. Rep. 52, holding that § 20 of the charter of the City of Mobile, giving the municipality the right to exercise full police powers, protect the rights of persons and property, regulate theaters, etc., empowers the city to pass an ordinance requiring theaters to pay for the services of a fireman or policeman, performed at the theater or place of exhibition. The question as to how far a municipality may go under its police power is a difficult one, and both decisions are supported by good reasoning. The Illinois court bases its holding on the ground that a municipal corporation is a government of delegated powers; that it possesses first, only such powers as are expressly granted, second, those necessary or fairly implied as incidental to the powers expressly granted, and third, those essential to the declared objects and purposes of the corporation, not including those merely convenient, *Chicago* v. *Blair*, 149 Ill. 310, 36 N. E.